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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,219	03/29/2001	George R. Borden IV	KLR 7146.091	6071
47915	7590	04/06/2005	EXAMINER	
CHERNOFF, VILHAUER, MCCLUNG & STENZEL, LLP				VU, THANH T
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601 SW SECOND AVENUE				
PORTLAND, OR 97204				2174
ART UNIT				
PAPER NUMBER				

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/823,219	BORDEN, GEORGE R.	
	Examiner	Art Unit	
	Thanh T. Vu	2174	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 December 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 6-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 6-16 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

This communication is responsive to Amendment, filed 12/22/2004.

Claims 6-16 are pending in this application. In the Amendment, claims 1-5, and 9 were cancelled, claims 10-16 were added, and claim 6 was amended. This action is made Final.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 16 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. “A rewritable file format for storing image content, said file format comprising: ...” is non-statutory for at least the reason that it is not tangibly embodied in a manner so as to be executable. Further the language of the claim raises question as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Window Explorer.

Per claim 6, Window Explorer teaches a method of selecting desirable images for a user comprising:

- (a) maintaining a list of a plurality of desirable user-selected image content that includes at least one of a digital image and a digital video (fig. 2; image list 20);
- (b) determining potential additional image content for said user based upon said list that includes at least one of an additional digital image and an additional digital video (figs. 3 and 4);
- (c) indicating to said user the potential desirability of adding said at least one of said additional digital image and said additional digital video without requiring interruption of the user's work flow (figs. 2 and 5; indicator 22).

Per claim 7, Window Explorer teaches the method of claim 6 wherein said indicating includes a visual indication (figs. 2 and 5; indicator 22).

Claims 10-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Echerer et al. (U.S. Pat. No. 5,740,267).

Per claim 10, Echerer teaches a digital imaging system comprising:

- (a) a retrieval device capable of retrieving at least one of a digital image file having an image pixel data portion and a digital video file having an image pixel data portion (col. 6, lines 55-67; col. 10, lines 53-67);
- (b) a storage device capable of storing said at least one of a digital image file and a digital video file (col. 7, lines 1-6);

(c) a presentation system capable of presenting to a user a respective image or video portrayed by said at least one of a digital image and a digital video without modification of said image pixel data portion on said storage device (col. 4, lines 26-37; col. 9, lines 24-36);

(d) an editing system capable of editing said respective image or video without modification of said image pixel data portion on said storage device by associating with said at least one of a digital image file and a digital video file a meta data portion (col. 8, line 56 - col. 9, line 23; col. 9, lines 24-36); and

(e) a managing system capable of saving said edited respective image or video to said storage device in a file format that includes said meta data portion and an unmodified said image pixel data portion (col. 9, lines 33-48).

Per claim 11, Ercherer teaches the system of claim 10 where said file format maybe retrieved by said retrieval system (col. 10, lines 53-67; col. 11, lines 5-25).

Per claim 12, Ercherer teaches the system of claim 10 including a capturing device (col. 7, lines 20-29).

Per claim 13, Ercherer teaches the system of claim 12 wherein said capturing device is at least one of a digital camera and a video camera (col. 5, lines 10-24).

Per claim 14, Ercherer teaches the system of claim 10 wherein said storage device is at least one of a compact disc, a hard drive, a tape, a digital video disc, and an optical disc (col. 6, lines 46-49).

Per claim 15, Ercherer teaches the system of claim 10 wherein said presentation system includes a browser (fig. 1; col. 10, lines 53-67).

Per claim 16,

Ercherer teaches a rewritable file format for storing image content, said file format comprising:

(a) a pixel data portion for preserving original image data free from modification when a file in said rewritable image format is rewritten (col. 6, lines 55-67; col. 8, line 56 - col. 9, line 23; col. 9, lines 24-36); and (b) a meta-data portion containing rewritable instructions for rendering said pixel data portion (col. 8, line 56 - col. 9, line 23; col. 9, lines 24-36).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Window Explorer.

Per claims 8, Window explorer teaches the method of claim 6, but does not teach said indicating includes an audible indication. Official Notice is taken that the use of audible sound indicator is well known in the art. It would have been obvious to an artisan at the time of the invention to combine such a feature with Window Explorer in order to inform users quickly and conveniently without the need for the user to read the text indicator.

Response to Arguments

Applicant's arguments with respect to the Amendment have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh T. Vu whose telephone number is (571) 272-4073. The examiner can normally be reached on Mon-Thur and every other Fri 8:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine L. Kincaid can be reached on (571) 272-4063. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2174

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

T. Vu

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